

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,
Plaintiff,
v.
KATHLEEN ALLISON, et al.
Defendants.

No. 1:22-cv-01580-JLT-SAB (PC)
ORDER DENYING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER
(Doc. 42)

On February 8, 2024, the instant action filed pursuant to 42 U.S.C. § 1983 was dismissed, without prejudice, for failure to exhaust the administrative remedies and judgment was entered. (Docs. 40, 41.) On February 16, 2024, Plaintiff filed a motion for a temporary restraining order. (Doc. 42.) Plaintiff contends that he needs an emergency transfer because inmates are trying to kill him. (*Id.* at 1.)

A temporary restraining order is an extraordinary measure of relief that a federal court may impose without notice to the adverse party if, in an affidavit or verified complaint, the movant “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). A plaintiff seeking injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council*,

1 *Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also Stuhlberg Int'l Sales Co. v. John D. Brush*
2 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the analysis for temporary restraining
3 orders and preliminary injunctions is “substantially identical”).

4 Because the instant action has been dismissed, without prejudice, for failure to exhaust the
5 administrative remedies, Plaintiff cannot show that he has any likelihood of success sufficient to
6 warrant a temporary restraining order. In addition, the Court does not have jurisdiction over any
7 parties in this action because the action is closed. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S.
8 574, 584 (1999) (“Personal jurisdiction, too, is an essential element of the jurisdiction of a
9 district...court, without which the court is powerless to proceed to an adjudication.”) (citation and
10 internal quotation omitted). Accordingly, the Court ORDERS:

- 11 1. Plaintiff’s motion for a temporary restraining order is DENIED.
- 12 2. The Clerk of Court is directed to provide this order to Litigation Coordinator at
13 Kern Valley State Prison via fax or email, so that if there are steps that need to be taken to protect
14 Mr. Smith, that those actions are taken.

15
16 IT IS SO ORDERED.

17 Dated: **February 21, 2024**


UNITED STATES DISTRICT JUDGE